

# CHANGES TO THE REGULATIONS SINCE THE LAST “TURQUOISE” LAW MANUAL (September 2004 Version)

On April 22, 2005, new regulations went into effect. The statutes did not change since the last edition of the law manual. Below is a summary of the changes made to regulations. The official language can be on the Legislative Research Commission’s website at [www.lrc.ky.gov](http://www.lrc.ky.gov). The changes are as follows:

## **201 KAR 11:011 (Definitions)**

The definitions of “guaranteed sales plan” and “required disclosure” pertaining to a guaranteed sales plan have been moved from 201 KAR 11:121 to this regulation.

## **201 KAR 11:030 (License cancellation; reasons for. Change of residence address)**

A license shall be automatically cancelled if the holder fails to notify the Commission in writing of the following changes: a broker’s business address, a change of firm name, a sales associate’s transfer from one broker to another or a change of surname.

## **201 KAR 11:040 (Contracts to contain financing provisions)**

The regulation has been repealed, and the language has been moved to 201 KAR 11:250.

## **201 KAR 11:045 (Written offers to be submitted to owner-client)**

This regulation was amended to state that, if a licensee has entered into a written listing agreement or any other written agency agreement, the licensee shall: (1) accept all written offers, (2) accept all earnest money deposits, (3) assist the principal in developing, communicating, negotiating and presenting offers and counter-offers, and (4) answer the principal’s questions relating to offers and counteroffers.

## **201 KAR 11:062 (Retention of broker’s records)**

A broker must now retain any written offers to lease or purchase, whether they were accepted or rejected.

## **201 KAR 11:105 (Owner’s consent and authorization)**

This regulation had several changes relating to advertising. A buyer’s agent may now advertise or promote his or her participation in the sale after a binding contract is created.

If advertising in the name of the principal broker, the principal broker’s name must now include his or her title as principal broker or any other clear designation of his or her status as a broker.

All advertisements by licensees must be approved by the principal broker or an individual designated by the principal broker.

A principal broker shall require all licensees to discuss the requirements of KRS 324.117 with the owner, provide the owner with written notice of these requirements and obtain the owner’s written agreement to comply with them.

A licensee may now advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement for those properties.

## **201 KAR 11:121 (Improper Conduct)**

This change outlines the activities and services that a licensee must perform in order to be paid as a loan originator or mortgage broker.

A licensee may not serve in the dual capacity of real estate licensee and loan originator if the licensee fails to disclose this dual role in writing, fails to indicate that the licensee will receive additional payment and fails to contact the Department of Financial Institutions

to register and pay the one time fee for engaging in loan origination. In addition, a licensee may not receive additional payments if they do not take information from the borrower, fill out an application and perform at least five of the fourteen specific activities as outlined in the regulation. For a list of the fourteen specific activities, please refer to our website. Licensees must review this list prior to engaging in loan origination for a fee.

This regulation also makes it improper for a broker licensed in Kentucky to aid, abet or otherwise assist any individual who is not actively licensed in Kentucky to perform real estate brokerage in this state. This prohibition includes a Kentucky broker assisting an unlicensed individual with listing, selling or managing Kentucky property for a buyer or seller. An unlicensed individual includes an individual who may be affiliated with a national franchise and may have a license in another state, but is not actively licensed in Kentucky.

## **201 KAR 11:250 (Listing and purchase contracts - provisions required)**

The financing contingency language was moved to this regulation from 201 KAR 11:040.

## **201 KAR 11:350 (Seller’s Disclosure of Property Condition)**

The changes to the form are as follows: (1) the property address is now located at the top of each page of the form, (2) at the bottom of each page all parties must now initial the form, (3) new questions were added under Roof 3(f)1 & 2, asking about replacing roof shingles, and (4) a new question was added under Miscellaneous 10 (o), asking if the property owners are aware of mold or other fungi on the property.

Forms can be printed from the Commission’s website ([www.krec.ky.gov](http://www.krec.ky.gov)) under “Licensee Restricted Contracts and Forms” in the General Information Section. In order to view the forms you must type in “get” as your User ID and “forms” as your password (all lower case). Licensees must use this form beginning on July 1, 2005.

## **201 KAR 11:400 (Agency disclosure requirements)**

This regulation clarified the definition of what a business relationship is, but did not change it.

## **201 KAR 11:410 (Broker duties pursuant to designated agency)**

This regulation change clarified that the information must be kept in an individual file which is accessible only by the principal broker or the designated agent. In addition, the language allowing a broker to designate himself or herself as the designated agent was removed because it was not in compliance with the statute.

## **201 KAR 11:430 (Procedure for criminal record background check)**

This change allows the Commission to investigate any charges or any other evidence of dishonesty, untruthfulness or bad reputation for licensure applicants.

The regulation codifies the Commission’s policy of not granting a license to an applicant who is on probation, parole or other state supervision, except in extraordinary circumstances.

If an applicant has engaged in any unlicensed brokerage activity prior to application, he or she must disgorge all fees received prior to application approval.